Since no note or memorandum of the moneylender's contract was given to the respondent, the contract for repayment of the money lent and the security given by the borrower to the applicant are by virtue of the said section 16(1) unenforceable and the respondent is entitled to a declaration.

I do, therefore, order that the application for an order that the land be sold at public auction be dismissed and do declare that the contract for repayment by the respondent of the principal and interest purported to be secured by a memorandum of charge (dated 31st day of August, 1952, and made between the respondent of the one part and the applicant of the other part and registered as Negri Sembilan Presentation No. 95101) and the charge over the land described in the said memorandum of charge are unenforceable.

I am now prepared to hear submissions concerning the necessary consequential orders and any argument concerning costs.

Application dismissed.

IP YING WAH v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) June 24, 1957]

[K. L. — Criminal Appeal No. 24 of 1957]

Penal Code s. 448 — House trespass with intent to annoy — Accused making statement from dock — Whether Magistrate can cross-examine him.

In this case the appellant was charged with an offence under section 448 of the Penal Code in that he committed house trespass by entering into the house of one Lum Kee with intent to annoy him. The evidence suggested that the accused went to the house to annoy Lum Kee's son but there was no evidence to show that accused entered the house to annoy Lum Kee. The charge was not amended but the Magistrate convicted the accused on the original charge. The accused made a statement from the dock and the Magistrate cross-examined him on his statement.

Held: (1) the charge against the accused was not proved and therefore the conviction must be set aside;

(2) when an accused elects to make a statement from the dock he is not subject to cross-examination.

MAGISTRATE'S CRIMINAL APPEAL.

Kam Woo Wah for the appellant.

H. S. Ong (Federal Counsel) for the respondent.

Buhagiar J. : — The appellant was charged with an offence punishable under section 448 of the Penal Code in that he committed house trespass by entering into the building of one Lum Kee, used as dwelling-house with intent to annoy the said Lum Kee. The appellant was found guilty, convicted and sentenced to four months' imprisonment. This is an appeal against conviction.

There is no question that for the offence of criminal trespass the prosecution must prove that the entry took place with the intent to intimidate, insult or annoy etc. It must be proved that some criminal intent was present in the mind of the accused at the time of entry and mere knowledge that the entry will annoy the occupant of the premises is not sufficient. It is quite clear in the present case that the evidence for the prosecution does not show that the accused had the intent to annoy Lum Kee; it may be that he entered the building with the intent to annoy Lum Kee's son, P.W.2 and under the circumstances the charge was not proved. It is in my opinion possible for the Magistrate to amend the charge before conviction but he did not do so and I do not consider that it is proper at this stage to rectify the error. Although the appellant may be guilty of some other offence, the charge against him has not been proved.

The appeal is therefore allowed and conviction and sentence set aside.

I should add that when the accused was called upon to make his defence he elected to make a statement from the dock and in this statement he admitted that he fought with P.W.2. The learned Magistrate, however, proceeded to cross-examine the accused. This should not have been done. When the accused elects to make a statement from the dock he is not subject to cross-examination.

Appeal allowed.

Solicitors: *S. M. Yong & Co.*

CHUA KIM HONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Buhagiar J.) June 24, 1957]

[K. L. — Criminal Appeal No. 26 of 1947]

Emergency (Registration Areas) Regulation, 1948, reg. 20A — Charge of accommodating a person without entering particulars in hotel register.

Hotel — Accommodation — Meaning to "accommodate."

In this case the appellant pleaded guilty to a charge under reg. 20A of the Emergency (Registration Areas) Regulation 1948. The facts were that a police officer went to a hotel of which the appellant was managing partner and of which he was in charge and saw a lady running from a room in the hotel. He stopped her and told her to return to the room. In the room he saw a Chinese male who was hurriedly dressing. The woman was not completely dressed. On investigation it was found that the names of the two persons were not entered in the register of the hotel. On admission of the facts by the appellant, he was convicted and sentenced to a fine of $1,000.

Held: (1) the object and purpose of the Emergency (Registration Areas) Regulation 1948 is to have a check on people within a registered area and regulation 16 was not intended to be a check on people who casually and for a temporary purpose make use of a room in a hotel;

(2) the word "accommodate" in the regulation under which the appellant was charged cannot mean a casual occupation of part of the premises or a room in a boarding house;